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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,622	02/10/2004	Mark Cozad	12437-3	1559

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EXAMINER

ROBINSON, MARK A

ART UNIT	PAPER NUMBER
2872	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,622	<b>Applicant(s)</b> COZAD, MARK	
	<b>Examiner</b> Mark A. Robinson	<b>Art Unit</b> 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Objections***

1. Claims 7-10 are objected to because of the following informalities. Appropriate correction is required.

Claim 7 recites "a second articulating joint." However, no first articulating joint was previously recited. It is improper to recite a "second" joint without previously reciting a "first."

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Birdwell (US 896,269).

Birdwell shows an adjustable mirror device including an elongated rod(1), clamping assembly(2,3) attached to the rod in a clamping manner, and a mirror assembly attached to the rod and including a mirror(18) and being slidable (via 8,9) along the

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rod relative to the clamping assembly(2,3) and also rotatable about the rod.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Towlen (US 5832926).

Towlen shows an adjustable mirror device for a medical halo(10) including an adjusting rod(43), a clamping assembly(42,44) attached to the rod and including first(42) and second(44) clamping members actuatable relative to each other, and a mirror assembly(45) connected to the adjusting rod. Towlen further shows a mounting member(49) and a laterally extending arm(47) with one end connected to the mounting member. Towlen shows the clamping members to be integral with the medical halo and thus does not meet the limitation "for attaching said clamping assembly to the medical halo" as in

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claim 2. However, this claimed limitation is seen to be a mere reversal or rearrangement of Towlen's arrangement, i.e. the claimed clamping members are combined with the adjusting rod whereas Towlen's clamping members are combined with the medical halo. It would have been obvious to the ordinarily skilled artisan at the time of invention to rearrange Towlen's clamping members with the adjusting rod to attach the rod to the medical halo since it has been held that such rearrangement involves only routine skill in the art. Note that the device would function the same and that including clamping members with the adjusting rod instead of the medical halo could allow for attachment of the mirror at various other convenient locations on the medical halo.

6. Claims 3-8 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Towlen (US 5832926) in view of Birdwell (US 896,269).

Towlen teaches the mirror to be adjustable, but does not specifically teach the mirror assembly to be translatable along the rod's axis and rotatable thereabout via its mounting member, with the mounting member being secured to the rod via a threaded bolt as set forth in claims 3-8. However, Birdwell shows such an arrangement as discussed previously. Note that Birdwell's

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mirror assembly is rotatable and translatable relative to the rod via the mounting member(8,9) which is secured to the rod(1) by a threaded bolt(at 9). Similarly, regarding claims 12-16, Towlen fails to show the mirror assembly to further include a transverse arm with one end connected to the laterally extending arm and the other end connected to the mirror, the mirror rotatable relative to the transverse arm, the transverse arm rotatable and translatable relative to the laterally extending arm, and a stop to prevent the mirror assembly from translating beyond the distal end of the rod. However, Birdwell shows a mirror assembly including these features. Note transverse arm(13) with one end connected to a laterally extending arm(10,11) and the other end connected to the mirror, the mirror rotatable relative to the transverse arm (via ball/socket 16), the transverse arm rotatable and translatable relative to the laterally extending arm (via the adjustable tube arrangement), and a stop (either of the clamps 2,3) to prevent the mirror assembly from translating beyond the distal end of the rod. It would have been obvious to the ordinarily skilled artisan at the time of invention to include these mirror assembly structures of Birdwell with Towlen's device in order to provide an increased adjustability of the mirror.

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7. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Towlen (US 5832926) in view of Birdwell (US 896,269) as applied to claim 7 above, and further in view of Johannsen (US 3877727).

Towlen (US 5832926) in view of Birdwell (US 896,269) does not show the mounting member to include a spring loaded pin received in one of a plurality of indentations formed along the adjusting rod. However, this alternative adjusting arrangement is well known and an example is shown by Johannsen (note indentations 89,90 and spring loaded adjusting pin 88). It would have been obvious to the ordinarily skilled artisan at the time of invention to use Johannsen's adjusting arrangement in place of that of Towlen in view of Birdwell since Johannsen's arrangement would provide for quicker adjustment of the mirror assembly.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claim 1 have been fully considered but they are not persuasive.

Applicant has argued that Birdwell does not show a clamping assembly, instead showing a set screw which is different from the claimed clamping assembly being attached to the adjusting rod in a clamping manner.

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However, "clamp" is defined by Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> ed., as "a device designed to bind or constrict or to press two or more parts together so as to hold them firmly," or something having parts brought together for holding something. Clearly, Birdwell's items (2,3,8,9) satisfy this definition since they comprise two parts pressed together (i.e. the screw 3,9 and the corresponding threads of 2,8) so that they are held firmly and which hold the rod(1).

### **Conclusion**

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated



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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Binner shows a mirror assembly attached with a clamp(17).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Robinson whose telephone number is (571) 272-2319.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn, can be reached at (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MR

11/18/05

  
MARK A. ROBINSON  
PRIMARY EXAMINER